

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KYLE W. TURPIN,

Petitioner,

vs.

WARDEN BRIAN WILLIAMS, et al.,

Respondents.

2:11-cv-01765-JCM-PAL

ORDER

Petitioner has filed a motion for leave to proceed *in forma pauperis* (ECF No. 4) in compliance with the court's previous order. The financial information provided indicate that petitioner qualifies to proceed *in forma pauperis* and his motion shall be granted.

Having reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Cases, the court finds that the petition fails to state a proper claim for habeas relief. Petitioner alleges a due process violation when the state courts denied him relief on his most recent motion to correct an illegal sentence. He alleges that the courts failed to "address the merits of [his] claims within [his] initial petition," asserting the result was an unreasonable application of clearly established United States Supreme Court law. He fails, however, to provide this court with the merits of the claims he contends that state courts mishandled, making only vague reference to a contention that "the two priors used should have counted as one prior under Nevada law." He asks this court to order an evidentiary hearing or remand for a new sentencing.

An application for a writ of habeas corpus on behalf of a person
in custody pursuant to the judgment of a State court shall not be granted

1 with respect to any claim that was adjudicated on the merits in State court
2 proceedings unless the adjudication of the claim --

3 (1) resulted in a decision that was contrary to, or involved an
4 unreasonable application of, clearly established Federal law, as
determined by the Supreme Court of the United States; or

5 (2) resulted in a decision that was based on an unreasonable
6 determination of the facts in light of the evidence presented in the State
court proceeding.

7 28 U.S.C. § 2254(d).

8 Without providing this court with the claims he presented to the state courts, it is
9 impossible to determine if petitioner can meet the above standard. However, rather than dismiss the
10 action outright, petitioner shall be given an opportunity to amend his petition to set out the facts and
11 federal legal theories he wishes this court to consider.

12 **IT IS THEREFORE ORDERED** that the motion to proceed in forma pauperis (ECF
13 No. 4) is **granted**.

14 **IT IS FURTHER ORDERED** that the clerk shall **detach and file** the petition (ECF No.
15 1-1) and **electronically serve** it and this order upon respondents.

16 **IT IS FURTHER ORDERED** that petitioner shall have thirty days to file an "Amended
17 Petition," entitled as such and including this case number, setting forth the claims presented to the
18 Nevada Supreme Court in his underlying action. Failure to file the amended petition within the allowed
19 time will result in the petition being dismissed and action being closed.

20 Dated, this 9th day of December, 2011.

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24 UNITED STATES DISTRICT JUDGE
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